

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LEE YOUNG AND CHARLES J. MIKHAIL

PLAINTIFFS

V.

NO. 1:09-CV-669

RICHARD F. SCRUGGS, INDIVIDUALLY;
SMBD, INC., DIRECTLY AND AS SUCCESSOR
IN INTEREST TO SCRUGGS, MILLETTE BOZEMAN,
AND DENT A/K/A SMBD, AND AS SUCCESSOR IN
INTEREST TO SCRUGGS LEGAL, P.A.; AND
DOE DEFENDANTS 1-20

DEFENDANTS

**DEFENDANTS' RESPONSE TO MOTION TO DEEM SERVICE
SUFFICIENT, FOR DEFAULT JUDGMENT OR, IN THE ALTERNATIVE,
FOR EXTENSION OF TIME WITHIN WHICH TO SERVE PROCESS**

Defendants Richard F. Scruggs and SMBD, Inc. ("Defendants"), respond and state the following objections to Plaintiffs' Motion to Deem Service Sufficient, for Default Judgment, or, in the Alternative, for Extension of Time Within Which to Serve Process. In support, Defendants state:

1. This matter relates to Plaintiffs' efforts to obtain more money from Defendants under an attorney fee agreement.
2. Plaintiffs have failed to properly serve Defendant Richard Scruggs. Despite their failures, Plaintiffs have asked this Court to deem their service effective, to grant default judgment in their favor, or, in the alternative, to extend the time for service of process.
3. Plaintiffs failed to serve Richard Scruggs within the 120 days provided under FRCP 4(m). Plaintiffs recent attempt at service (Dkt. No. 31) occurred outside the 120-day service period. For this reason, Plaintiffs' most recent attempt (like its earlier attempts) is invalid and insufficient.

4. Plaintiffs have not presented any good reason for extending the time period for service of process. Plaintiffs' failure to serve is due, at best, to mistake or ignorance of the rules. Neither suffices for good cause to enlarge the time for service.

5. Default judgment against Defendant Richard Scruggs is not appropriate because Scruggs has raised other defenses in his Motion to Dismiss. In other words, Scruggs has timely responded to Plaintiffs' Complaint in the manner permitted by FRCP 12.

FOR THESE REASONS, Defendants request that this Court deny Plaintiff's Motion to Deem Service Sufficient, for Default Judgment, or, in the Alternative, for Extension of Time Within Which to Serve Process. Defendants request such other relief as the Court deems appropriate under the circumstances.

THIS, the 11th day of February, 2010.

RICHARD F. SCRUGGS AND SMBD, INC.

/s/ J. Cal Mayo, Jr.
J. CAL MAYO, JR. (MB NO. 8492)
POPE S. MALLETTE (MB NO. 9836)
PAUL B. WATKINS (MB NO. 102348)
Attorneys for Defendants

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, J. CAL MAYO, JR., one of the attorneys for Defendants Richard F. Scruggs and SMBD, Inc., do certify that I have electronically filed the foregoing document with the Clerk of the Court using the ECF system, who forwarded a copy of same to the following:

James R. Reeves, Jr.
Matthew G. Mestayer
Lumpkin, Reeves & Mestayer, PLLC
160 Main Street
P.O. Drawer 1388
Biloxi, Mississippi 39533
ATTORNEYS FOR PLAINTIFFS

THIS, the 11th day of February, 2010.

/s/ J. Cal Mayo, Jr.
J. CAL MAYO, JR.